

**BEFORE THE
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Accusation)
Against:)
)
)
Fouad Mohammed Nouri, M.D.)
)
Physician's and Surgeon's)
Certificate No. A 64212)
)
Respondent)
_____)

Case No. 800-2015-012424


DECISION

The attached Stipulated Settlement and Disciplinary Order is hereby adopted as the Decision and Order of the Medical Board of California, Department of Consumer Affairs, State of California.

This Decision shall become effective at 5:00 p.m. on February 1, 2019.

IT IS SO ORDERED: January 3, 2019.

MEDICAL BOARD OF CALIFORNIA



**Kristina D. Lawson, J.D., Chair
Panel B**

1 XAVIER BECERRA
Attorney General of California
2 ROBERT MCKIM BELL
Supervising Deputy Attorney General
3 TRINA L. SAUNDERS
Deputy Attorney General
4 State Bar No. 207764
300 South Spring Street, Suite 1702
5 Los Angeles, CA 90013
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Attorneys for Complainant
7

8 **BEFORE THE**
9 **MEDICAL BOARD OF CALIFORNIA**
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

Case No. 800-2015-012424

13 FOUAD MOHAMMAD M. NOURI, M.D.

OAH No. 2018040967

14 1233 North Vermont Avenue, Suite 1
Los Angeles, California 90029-1749

15 **STIPULATED SETTLEMENT AND**
16 **DISCIPLINARY ORDER**

17 Physician's and Surgeon's Certificate A 64212,

18 Respondent.

19 **IT IS HEREBY STIPULATED AND AGREED** by and between the parties to the above-
20 entitled proceedings that the following matters are true:

21 **PARTIES**

22 1. Kimberly Kirchmeyer (Complainant) is the Executive Director of the Medical Board
23 of California (Board). She brought this action solely in her official capacity and is represented in
24 this matter by Xavier Becerra, Attorney General of the State of California, by Trina L. Saunders,
25 Deputy Attorney General.

26 2. Respondent Fouad Mohammad M. Nouri, M.D. (Respondent) is represented in this
27 proceeding by attorney Samuel P. Plunkett, whose address is 1522 W. Glenoaks Blvd., Ste. D,
28 Glendale, California 91201.

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1 3. On December 25, 1997, the Board issued Physician's and Surgeon's Certificate No. A
2 64212 to Respondent. That license was in full force and effect at all times relevant to the charges
3 brought in Accusation No. 800-2015-012424, and will expire on September 30, 2019, unless
4 renewed.

5 JURISDICTION

6 4. On March 5, 2017, the Board filed a First Amended Accusation against Respondent
7 entitled in Case No. 800-2014-003866. A copy of the First Amended Accusation is attached
8 hereto as Exhibit A and is incorporated by reference as if fully set forth herein.

9 5. On October 26, 2017, the Board issued a Decision and Order that became effective
10 on November 24, 2017, *In the Matter of the First Amended Accusation Against Fouad*
11 *Mohammed Nouri, M.D.*, Case No. 800-2014-003866, in which Respondent's Physician's and
12 Surgeon's Certificate No. A 64212 was revoked. However, that revocation was stayed and
13 Respondent's Physician's and Surgeon's Certificate was placed on probation for a period of five
14 (5) years with certain terms and conditions. A copy of the Decision and Order is
15 attached hereto as Exhibit B and is incorporated by reference as if fully set forth herein.

16 6. On March 2, 2018, Accusation No. 800-2015-012424 was filed before the Board,
17 and is currently pending against Respondent. The Accusation and all other statutorily required
18 documents were properly served on Respondent on March 2, 2018. Respondent timely filed his
19 Notice of Defense contesting the Accusation.

20 7. A copy of Accusation No. 800-2015-012424 is attached as Exhibit C and is
21 incorporated herein by reference.

22 ADVISEMENT AND WAIVERS

23 8. Respondent has carefully read, fully discussed with counsel, and understands the
24 charges and allegations in Accusation No. 800-2015-012424. Respondent has also carefully read,
25 fully discussed with counsel, and understands the effects of this Stipulated Settlement and
26 Disciplinary Order.
27
28

9. Respondent is fully aware of his legal rights in this matter, including the right to a hearing on the charges and allegations in the Accusation; the right to confront and cross-examine the witnesses against him; the right to present evidence and to testify on his own behalf; the right to the issuance of subpoenas to compel the attendance of witnesses and the production of documents; the right to reconsideration and court review of an adverse decision; and all other rights accorded by the California Administrative Procedure Act and other applicable laws.

10. Respondent voluntarily, knowingly, and intelligently waives and gives up each and every right set forth above.

CULPABILITY

11. Respondent understands and agrees that the charges and allegations in Accusation No. 800-2015-012424, if proven at a hearing, constitute cause for imposing discipline upon his Physician's and Surgeon's Certificate.

12. For the purpose of resolving the Accusation without the expense and uncertainty of further proceedings, Respondent agrees that, at a hearing, Complainant could establish a factual basis for the charges in the Accusation, and that Respondent hereby gives up his right to contest those charges.

13. Respondent agrees that his Physician's and Surgeon's Certificate is subject to discipline and he agrees to be bound by the Board's probationary terms as set forth in the Disciplinary Order below.

CONTINGENCY

14. This stipulation shall be subject to approval by the Medical Board of California. Respondent understands and agrees that counsel for Complainant and the staff of the Medical Board of California may communicate directly with the Board regarding this stipulation and settlement, without notice to or participation by Respondent or his counsel. By signing the stipulation, Respondent understands and agrees that he may not withdraw his agreement or seek to rescind the stipulation prior to the time the Board considers and acts upon it. If the Board fails to adopt this stipulation as its Decision and Order, the Stipulated Settlement and Disciplinary Order shall be of no force or effect, except for this paragraph, it shall be inadmissible in any legal

1 action between the parties, and the Board shall not be disqualified from further action by having
2 considered this matter.

3 15. The parties understand and agree that Portable Document Format (PDF) and facsimile
4 copies of this Stipulated Settlement and Disciplinary Order, including PDF and facsimile
5 signatures thereto, shall have the same force and effect as the originals.

6 16. In consideration of the foregoing admissions and stipulations, the parties agree that
7 the Board may, without further notice or formal proceeding, issue and enter the following
8 Disciplinary Order:

9 **DISCIPLINARY ORDER**

10 **IT IS HEREBY ORDERED THAT** Physician's and Surgeon's Certificate No. A 64212
11 issued to Respondent Fouad Mohammad Nouri, M.D. is revoked. However, the revocation is
12 stayed and Respondent is placed on probation for three (3) years on the following terms and
13 conditions.

14 1. **THREE (3) YEARS OF ADDITIONAL PROBATION.** Respondent is
15 placed on probation for three (3) years, which grant of additional probation shall run consecutive
16 to the term of probation previously ordered in Case No. 800-2014-003866.

17 2. **PRESCRIBING PRACTICES COURSE.** Within 60 calendar days of the
18 effective date of this Decision, Respondent shall enroll in a course in prescribing practices
19 approved in advance by the Board or its designee. Respondent shall provide the approved course
20 provider with any information and documents that the approved course provider may deem
21 pertinent. Respondent shall participate in and successfully complete the classroom component of
22 the course not later than six (6) months after Respondent's initial enrollment. Respondent shall
23 successfully complete any other component of the course within one (1) year of enrollment. The
24 prescribing practices course shall be at Respondent's expense and shall be in addition to the
25 Continuing Medical Education (CME) requirements for renewal of licensure.

26 A prescribing practices course taken after the acts that gave rise to the charges in the
27 Accusation, but prior to the effective date of the Decision may, in the sole discretion of the Board
28 or its designee, be accepted towards the fulfillment of this condition if the course would have

1 been approved by the Board or its designee had the course been taken after the effective date of
2 this Decision.

3 Respondent shall submit a certification of successful completion to the Board or its
4 designee not later than 15 calendar days after successfully completing the course, or not later than
5 15 calendar days after the effective date of the Decision, whichever is later.

6 3. MEDICAL RECORD KEEPING COURSE. Within 60 calendar days of
7 the effective date of this Decision, Respondent shall enroll in a course in medical record keeping
8 approved in advance by the Board or its designee. Respondent shall provide the approved course
9 provider with any information and documents that the approved course provider may deem
10 pertinent. Respondent shall participate in and successfully complete the classroom component of
11 the course not later than six (6) months after Respondent's initial enrollment. Respondent shall
12 successfully complete any other component of the course within one (1) year of enrollment. The
13 medical record keeping course shall be at Respondent's expense and shall be in addition to the
14 Continuing Medical Education (CME) requirements for renewal of licensure.

15 A medical record keeping course taken after the acts that gave rise to the charges in the
16 Accusation, but prior to the effective date of the Decision may, in the sole discretion of the Board
17 or its designee, be accepted towards the fulfillment of this condition if the course would have
18 been approved by the Board or its designee had the course been taken after the effective date of
19 this Decision.

20 Respondent shall submit a certification of successful completion to the Board or its
21 designee not later than 15 calendar days after successfully completing the course, or not later than
22 15 calendar days after the effective date of the Decision, whichever is later.

23 4. MONITORING - PRACTICE. Within 30 calendar days of the effective
24 date of this Decision, Respondent shall submit to the Board or its designee for prior approval as a
25 practice monitor(s), the name and qualifications of one or more licensed physicians and surgeons
26 whose licenses are valid and in good standing, and who are preferably American Board of
27 Medical Specialties (ABMS) certified. A monitor shall have no prior or current business or
28 personal relationship with Respondent, or other relationship that could reasonably be expected to

1 compromise the ability of the monitor to render fair and unbiased reports to the Board, including
2 but not limited to any form of bartering, shall be in Respondent's field of practice, and must agree
3 to serve as Respondent's monitor. Respondent shall pay all monitoring costs.

4 The Board or its designee shall provide the approved monitor with copies of the Decision(s)
5 and Accusation(s), and a proposed monitoring plan. Within 15 calendar days of receipt of the
6 Decision(s), Accusation(s), and proposed monitoring plan, the monitor shall submit a signed
7 statement that the monitor has read the Decision(s) and Accusation(s), fully understands the role
8 of a monitor, and agrees or disagrees with the proposed monitoring plan. If the monitor disagrees
9 with the proposed monitoring plan, the monitor shall submit a revised monitoring plan with the
10 signed statement for approval by the Board or its designee.

11 Within 60 calendar days of the effective date of this Decision, and continuing throughout
12 probation, Respondent's practice shall be monitored by the approved monitor. Respondent shall
13 make all records available for immediate inspection and copying on the premises by the monitor
14 at all times during business hours and shall retain the records for the entire term of probation.

15 If Respondent fails to obtain approval of a monitor within 60 calendar days of the effective
16 date of this Decision, Respondent shall receive a notification from the Board or its designee to
17 cease the practice of medicine within three (3) calendar days after being so notified. Respondent
18 shall cease the practice of medicine until a monitor is approved to provide monitoring
19 responsibility.

20 The monitor(s) shall submit a quarterly written report to the Board or its designee which
21 includes an evaluation of Respondent's performance, indicating whether Respondent's practices
22 are within the standards of practice of medicine, and whether Respondent is practicing medicine
23 safely, billing appropriately or both. It shall be the sole responsibility of Respondent to ensure
24 that the monitor submits the quarterly written reports to the Board or its designee within 10
25 calendar days after the end of the preceding quarter.

26 If the monitor resigns or is no longer available, Respondent shall, within 5 calendar days of
27 such resignation or unavailability, submit to the Board or its designee, for prior approval, the
28 name and qualifications of a replacement monitor who will be assuming that responsibility within

1 15 calendar days. If Respondent fails to obtain approval of a replacement monitor within 60
2 calendar days of the resignation or unavailability of the monitor, Respondent shall receive a
3 notification from the Board or its designee to cease the practice of medicine within three (3)
4 calendar days after being so notified. Respondent shall cease the practice of medicine until a
5 replacement monitor is approved and assumes monitoring responsibility.

6 In lieu of a monitor, Respondent may participate in a professional enhancement program
7 approved in advance by the Board or its designee that includes, at minimum, quarterly chart
8 review, semi-annual practice assessment, and semi-annual review of professional growth and
9 education. Respondent shall participate in the professional enhancement program at Respondent's
10 expense during the term of probation.

11 5. CONTROLLED SUBSTANCES – MAINTAIN RECORDS AND
12 ACCESS TO RECORDS AND INVENTORIES. Respondent shall maintain a record of all
13 controlled substances ordered, prescribed, dispensed, administered, or possessed by Respondent,
14 and any recommendation or approval which enables a patient or patient's primary caregiver to
15 possess or cultivate marijuana for the personal medical purposes of the patient within the meaning
16 of health and Safety Code section 11362.5, during probation, showing all the following: 1) the
17 name and address of patient; 2) the date; 3) the character and quantity of controlled substances
18 involved; and 4) the indications and diagnosis for which the controlled substances were furnished.

19 Respondent shall keep these records in a separate file or ledger, in chronological order.
20 All records and any inventories of controlled substances shall be available for immediate
21 inspection and copying on the premises by the Board or its designee at all times during business
22 hours and shall be retained for the entire term of probation.

23 6. CLINICAL COMPETENCE ASSESSMENT PROGRAM. Within 60
24 calendar days of the effective date of this Decision, Respondent shall enroll in a clinical
25 competence assessment program approved in advance by the Board or its designee. Respondent
26 shall successfully complete the program not later than six (6) months after Respondent's initial
27 enrollment unless the Board or its designee agrees in writing to an extension of that time.

28 The program shall consist of a comprehensive assessment of Respondent's physical and

1 mental health and the six general domains of clinical competence as defined by the Accreditation
2 Council on Graduate Medical Education and American Board of Medical Specialties pertaining to
3 Respondent's current or intended area of practice. The program shall take into account data
4 obtained from the pre-assessment, self-report forms and interview, and the Decision(s),
5 Accusation(s), and any other information that the Board or its designee deems relevant. The
6 program shall require Respondent's on-site participation for a minimum of 3 and no more than 5
7 days as determined by the program for the assessment and clinical education evaluation.
8 Respondent shall pay all expenses associated with the clinical competence assessment program.

9 At the end of the evaluation, the program will submit a report to the Board or its designee
10 which unequivocally states whether the Respondent has demonstrated the ability to practice
11 safely and independently. Based on Respondent's performance on the clinical competence
12 assessment, the program will advise the Board or its designee of its recommendation(s) for the
13 scope and length of any additional educational or clinical training, evaluation or treatment for any
14 medical condition or psychological condition, or anything else affecting Respondent's practice of
15 medicine. Respondent shall comply with the program's recommendations.

16 Determination as to whether Respondent successfully completed the clinical competence
17 assessment program is solely within the program's jurisdiction.

18 If Respondent fails to enroll, participate in, or successfully complete the clinical
19 competence assessment program within the designated time period, Respondent shall receive a
20 notification from the Board or its designee to cease the practice of medicine within three (3)
21 calendar days after being so notified. The Respondent shall not resume the practice of medicine
22 until enrollment or participation in the outstanding portions of the clinical competence assessment
23 program have been completed. If the Respondent did not successfully complete the clinical
24 competence assessment program, the Respondent shall not resume the practice of medicine until a
25 final decision has been rendered on the accusation and/or a petition to revoke probation. The
26 cessation of practice shall not apply to the reduction of the probationary time period.

27 7. NOTIFICATION. Within seven (7) days of the effective date of this
28 Decision, the Respondent shall provide a true copy of this Decision and Accusation to the Chief

1 of Staff or the Chief Executive Officer at every hospital where privileges or membership are
2 extended to Respondent, at any other facility where Respondent engages in the practice of
3 medicine, including all physician and locum tenens registries or other similar agencies, and to the
4 Chief Executive Officer at every insurance carrier which extends malpractice insurance coverage
5 to Respondent. Respondent shall submit proof of compliance to the Board or its designee within
6 15 calendar days.

7 This condition shall apply to any change(s) in hospitals, other facilities or insurance carrier.

8 8. SUPERVISION OF PHYSICIAN ASSISTANTS AND ADVANCED
9 PRACTICE NURSES. During probation, Respondent is prohibited from supervising physician
10 assistants and advanced practice nurses.

11 9. OBEY ALL LAWS. Respondent shall obey all federal, state and local
12 laws, all rules governing the practice of medicine in California and remain in full compliance
13 with any court ordered criminal probation, payments, and other orders.

14 10. QUARTERLY DECLARATIONS. Respondent shall submit quarterly
15 declarations under penalty of perjury on forms provided by the Board, stating whether there has
16 been compliance with all the conditions of probation.

17 Respondent shall submit quarterly declarations not later than 10 calendar days after the end
18 of the preceding quarter.

19 11. GENERAL PROBATION REQUIREMENTS.

20 Compliance with Probation Unit

21 Respondent shall comply with the Board's probation unit.

22 Address Changes

23 Respondent shall, at all times, keep the Board informed of Respondent's business and
24 residence addresses, email address (if available), and telephone number. Changes of such
25 addresses shall be immediately communicated in writing to the Board or its designee. Under no
26 circumstances shall a post office box serve as an address of record, except as allowed by Business
27 and Professions Code section 2021(b).

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1 Place of Practice

2 Respondent shall not engage in the practice of medicine in Respondent's or patient's place
3 of residence, unless the patient resides in a skilled nursing facility or other similar licensed
4 facility.

5 License Renewal

6 Respondent shall maintain a current and renewed California physician's and surgeon's
7 license.

8 Travel or Residence Outside California

9 Respondent shall immediately inform the Board or its designee, in writing, of travel to any
10 areas outside the jurisdiction of California which lasts, or is contemplated to last, more than thirty
11 (30) calendar days.

12 In the event Respondent should leave the State of California to reside or to practice,
13 Respondent shall notify the Board or its designee in writing 30 calendar days prior to the dates of
14 departure and return.

15 12. INTERVIEW WITH THE BOARD OR ITS DESIGNEE. Respondent
16 shall be available in person upon request for interviews either at Respondent's place of business
17 or at the probation unit office, with or without prior notice throughout the term of probation.

18 13. NON-PRACTICE WHILE ON PROBATION. Respondent shall notify the
19 Board or its designee in writing within 15 calendar days of any periods of non-practice lasting
20 more than 30 calendar days and within 15 calendar days of Respondent's return to practice. Non-
21 practice is defined as any period of time Respondent is not practicing medicine as defined in
22 Business and Professions Code sections 2051 and 2052 for at least 40 hours in a calendar month
23 in direct patient care, clinical activity or teaching, or other activity as approved by the Board. If
24 Respondent resides in California and is considered to be in non-practice, Respondent shall
25 comply with all terms and conditions of probation. All time spent in an intensive training
26 program which has been approved by the Board or its designee shall not be considered non-
27 practice and does not relieve Respondent from complying with all the terms and conditions of
28 probation. Practicing medicine in another state of the United States or Federal jurisdiction while

1 on probation with the medical licensing authority of that state or jurisdiction shall not be
2 considered non-practice. A Board-ordered suspension of practice shall not be considered as a
3 period of non-practice.

4 In the event Respondent's period of non-practice while on probation exceeds 18 calendar
5 months, Respondent shall successfully complete the Federation of State Medical Board's Special
6 Purpose Examination, or, at the Board's discretion, a clinical competence assessment program
7 that meets the criteria of Condition 18 of the current version of the Board's "Manual of Model
8 Disciplinary Orders and Disciplinary Guidelines" prior to resuming the practice of medicine.

9 Respondent's period of non-practice while on probation shall not exceed two (2) years.

10 Periods of non-practice will not apply to the reduction of the probationary term.

11 Periods of non-practice for a Respondent residing outside of California will relieve
12 Respondent of the responsibility to comply with the probationary terms and conditions with the
13 exception of this condition and the following terms and conditions of probation: Obey All Laws;
14 General Probation Requirements; Quarterly Declarations; Abstain from the Use of Alcohol and/or
15 Controlled Substances; and Biological Fluid Testing.

16 14. COMPLETION OF PROBATION. Respondent shall comply with all
17 financial obligations (e.g., restitution, probation costs) not later than 120 calendar days prior to
18 the completion of probation. Upon successful completion of probation, Respondent's certificate
19 shall be fully restored.

20 15. VIOLATION OF PROBATION. Failure to fully comply with any term or
21 condition of probation is a violation of probation. If Respondent violates probation in any
22 respect, the Board, after giving Respondent notice and the opportunity to be heard, may revoke
23 probation and carry out the disciplinary order that was stayed. If an Accusation, or Petition to
24 Revoke Probation, or an Interim Suspension Order is filed against Respondent during probation,
25 the Board shall have continuing jurisdiction until the matter is final, and the period of probation
26 shall be extended until the matter is final.

27 16. LICENSE SURRENDER. Following the effective date of this Decision, if
28 Respondent ceases practicing due to retirement or health reasons or is otherwise unable to satisfy

1 the terms and conditions of probation, Respondent may request to surrender his or her license.
2 The Board reserves the right to evaluate Respondent's request and to exercise its discretion in
3 determining whether or not to grant the request, or to take any other action deemed appropriate
4 and reasonable under the circumstances. Upon formal acceptance of the surrender, Respondent
5 shall within 15 calendar days deliver Respondent's wallet and wall certificate to the Board or its
6 designee and Respondent shall no longer practice medicine. Respondent will no longer be subject
7 to the terms and conditions of probation. If Respondent re-applies for a medical license, the
8 application shall be treated as a petition for reinstatement of a revoked certificate.

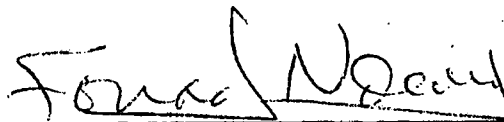
9 17. PROBATION MONITORING COSTS. Respondent shall pay the costs
10 associated with probation monitoring each and every year of probation, as designated by the
11 Board, which may be adjusted on an annual basis. Such costs shall be payable to the Medical
12 Board of California and delivered to the Board or its designee no later than January 31 of each
13 calendar year.

14 18. All terms and conditions previously ordered in Case No. 800-2014-003866
15 are continued, remain unchanged, and shall run concurrent with this grant of additional probation.

16
17 ACCEPTANCE

18 I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully
19 discussed it with my attorney, Samuel P. Plunkett. I understand the stipulation and the effect it
20 will have on my Physician's and Surgeon's Certificate. I enter into this Stipulated Settlement and
21 Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be bound by the
22 Decision and Order of the Medical Board of California.

23
24 DATED: 10-09-2018



25 FOUAD MOHAMMAD M. NOURI, M.D.
26 Respondent


27 ///

28 ///

///

1 I have read and fully discussed with Respondent Fouad Mohammad M. Nouri, M.D. the
2 terms and conditions and other matters contained in the above Stipulated Settlement and
3 Disciplinary Order. I approve its form and content.

4
5 DATED: 10/9/18


6 SAMUEL P. PLUNKETT
7 Attorney for Respondent

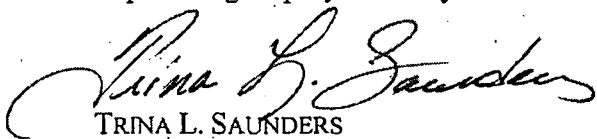
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9 ENDORSEMENT

10 The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully
11 submitted for consideration by the Medical Board of California.

12 Dated: October 9, 2018

13 Respectfully submitted,

14 XAVIER BECERRA
15 Attorney General of California
16 ROBERT MCKIM BELL
17 Supervising Deputy Attorney General


18 TRINA L. SAUNDERS
19 Deputy Attorney General
20 Attorneys for Complainant

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EXHIBIT A

1 XAVIER BECERRA
Attorney General of California
2 JUDITH T. ALVARADO
Supervising Deputy Attorney General
3 RANDALL R. MURPHY
Deputy Attorney General
4 State Bar No. 165851
California Department of Justice
5 300 So. Spring Street, Suite 1702
Los Angeles, CA 90013
6 Telephone: (213) 269-6496
Facsimile: (213) 897-9395
7 *Attorneys for Complainant*

FILED
STATE OF CALIFORNIA
MEDICAL BOARD OF CALIFORNIA
SACRAMENTO March 2 20 18
BY SARA PASON ANALYST

8
9 **BEFORE THE**
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
10 **STATE OF CALIFORNIA**

11 In the Matter of the Accusation Against:

Case No. 800-2015-012424

12 Fouad Mohammed M. Nouri, M.D.
1233 N Vermont Ave, Suite 1
13 Los Angeles, CA 90029-1749

A C C U S A T I O N

14 Physician's and Surgeon's Certificate
15 No. A 64212,

16 Respondent.

17
18 Complainant alleges:

19 **PARTIES**

20 1. Kimberly Kirchmeyer (Complainant) brings this Accusation solely in her official
21 capacity as the Executive Director of the Medical Board of California, Department of Consumer
22 Affairs (Board).

23 2. On or about December 25, 1997, the Medical Board issued Physician's and Surgeon's
24 Certificate Number A 64212 to Fouad Mohammed M. Nouri, M.D. (Respondent). The
25 Physician's and Surgeon's Certificate was in full force and effect at all times relevant to the
26 charges brought herein and will expire on September 30, 2019, unless renewed.

27 **JURISDICTION**

28 3. This Accusation is brought before the Board, under the authority of the following

1 laws. All section references are to the Business and Professions Code unless otherwise indicated.

2 4. The Medical Practice Act ("Act") is codified at Business and Professions Code,
3 Section 2000 et seq.

4 5. Pursuant to Code section 2001.1, the Board's highest priority is public protection.

5 6. Section 2004 of the Code states:

6 "The board shall have the responsibility for the following:

7 "(a) The enforcement of the disciplinary and criminal provisions of the Medical
8 Practice Act.

9 "(b) The administration and hearing of disciplinary actions.

10 "(c) Carrying out disciplinary actions appropriate to findings made by a panel or an
11 administrative law judge.

12 "(d) Suspending, revoking, or otherwise limiting certificates after the conclusion of
13 disciplinary actions.

14 "(e) Reviewing the quality of medical practice carried out by physician and surgeon
15 certificate holders under the jurisdiction of the board.

16 "..."

17 7. Code section 2227, subdivision (a), provides as follows:

18 "(a) A licensee whose matter has been heard by an administrative law judge of the
19 Medical Quality Hearing Panel as designated in Section 11371 of the Government Code, or
20 whose default has been entered, and who is found guilty, or who has entered into a stipulation for
21 disciplinary action with the board, may, in accordance with the provisions of this chapter:

22 "(1) Have his or her license revoked upon order of the board.

23 "(2) Have his or her right to practice suspended for a period not to exceed one year
24 upon order of the board.

25 "(3) Be placed on probation and be required to pay the costs of probation monitoring
26 upon order of the board.

27 "(4) Be publicly reprimanded by the board. The public reprimand may include a
28 requirement that the licensee complete relevant educational courses approved by the board.

1 “(5) Have any other action taken in relation to discipline as part of an order of
2 probation, as the board or an administrative law judge may deem proper.

3 “(b) Any matter heard pursuant to subdivision (a), except for warning letters, medical
4 review or advisory conferences, professional competency examinations, continuing education
5 activities, and cost reimbursement associated therewith that are agreed to with the board and
6 successfully completed by the licensee, or other matters made confidential or privileged by
7 existing law, is deemed public, and shall be made available to the public by the board pursuant to
8 Section 803.1.”

9 8. Section 2234 of the Code, states:

10 “The board shall take action against any licensee who is charged with unprofessional
11 conduct. In addition to other provisions of this article, unprofessional conduct includes, but is not
12 limited to, the following:

13 “(a) Violating or attempting to violate, directly or indirectly, assisting in or abetting
14 the violation of, or conspiring to violate any provision of this chapter.

15 “(b) Gross negligence.

16 “(c) Repeated negligent acts. To be repeated, there must be two or more negligent
17 acts or omissions. An initial negligent act or omission followed by a separate and distinct
18 departure from the applicable standard of care shall constitute repeated negligent acts.

19 “(1) An initial negligent diagnosis followed by an act or omission medically appropriate for
20 that negligent diagnosis of the patient shall constitute a single negligent act.

21 “(2) When the standard of care requires a change in the diagnosis, act, or omission that
22 constitutes the negligent act described in paragraph (1), including, but not limited to, a
23 reevaluation of the diagnosis or a change in treatment, and the licensee’s conduct departs from the
24 applicable standard of care, each departure constitutes a separate and distinct breach of the
25 standard of care.

26 “(d) Incompetence.

27 “(e) The commission of any act involving dishonesty or corruption which is
28 substantially related to the qualifications, functions, or duties of a physician and surgeon.

1 “(f) Any action or conduct which would have warranted the denial of a certificate.

2 “(g) The practice of medicine from this state into another state or country without
3 meeting the legal requirements of that state or country for the practice of medicine. Section 2314
4 shall not apply to this subdivision. This subdivision shall become operative upon the
5 implementation of the proposed registration program described in Section 2052.5.

6 “(h) The repeated failure by a certificate holder, in the absence of good cause, to
7 attend and participate in an interview by the board. This subdivision shall only apply to a
8 certificate holder who is the subject of an investigation by the board.”

9 9. Section 2238 of the Code states: “A violation of any federal statute or federal
10 regulation or any of the statutes or regulations of this state regulating dangerous drugs or
11 controlled substances constitutes unprofessional conduct.”

12 10. Section 2241 of the Code states:

13 “(a) A physician and surgeon may prescribe, dispense, or administer prescription
14 drugs, including prescription controlled substances, to an addict under his or her treatment for a
15 purpose other than maintenance on, or detoxification from, prescription drugs or controlled
16 substances.

17 “(b) A physician and surgeon may prescribe, dispense, or administer prescription
18 drugs or prescription controlled substances to an addict for purposes of maintenance on, or
19 detoxification from, prescription drugs or controlled substances only as set forth in subdivision
20 (c) or in Sections 11215, 11217, 11217.5, 11218, 11219, and 11220 of the Health and Safety
21 Code Number. Nothing in this subdivision shall authorize a physician and surgeon to prescribe,
22 dispense, or administer dangerous drugs or controlled substances to a person he or she knows or
23 reasonably believes is using or will use the drugs or substances for a nonmedical purpose.

24 “(c) Notwithstanding subdivision (a), prescription drugs or controlled substances may
25 also be administered or applied by a physician and surgeon, or by a registered nurse acting under
26 his or her instruction and supervision, under the following circumstances:

27 “(1) Emergency treatment of a patient whose addiction is complicated by the presence
28 of incurable disease, acute accident, illness, or injury, or the infirmities attendant upon age.

1 “(2) Treatment of addicts in state-licensed institutions where the patient is kept under
2 restraint and control, or in city or county jails or state prisons.

3 “(3) Treatment of addicts as provided for by Section 11217.5 of the Health and Safety
4 Code.

5 “(d) (1) For purposes of this section and Section 2241.5, “addict” means a person
6 whose actions are characterized by craving in combination with one or more of the following:

7 “(A) Impaired control over drug use.

8 “(B) Compulsive use.

9 “(C) Continued use despite harm.

10 “(2) Notwithstanding paragraph (1), a person whose drug-seeking behavior is
11 primarily due to the inadequate control of pain is not an addict within the meaning of this section
12 or Section 2241.5.”

13 11. Section 2242 of the Code states:

14 “(a) Prescribing, dispensing, or furnishing dangerous drugs as defined in Section 4022
15 without an appropriate prior examination and a medical indication, constitutes unprofessional
16 conduct.

17 “(b) No licensee shall be found to have committed unprofessional conduct within the
18 meaning of this section if, at the time the drugs were prescribed, dispensed, or furnished, any of
19 the following applies:

20 “(1) The licensee was a designated physician and surgeon or podiatrist serving in the
21 absence of the patient’s physician and surgeon or podiatrist, as the case may be, and if the drugs
22 were prescribed, dispensed, or furnished only as necessary to maintain the patient until the return
23 of his or her practitioner, but in any case no longer than 72 hours.

24 “(2) The licensee transmitted the order for the drugs to a registered nurse or to a licensed
25 vocational nurse in an inpatient facility, and if both of the following conditions exist:

26 “(A) The practitioner had consulted with the registered nurse or licensed vocational nurse
27 who had reviewed the patient’s records.

28 ///

“(B) The practitioner was designated as the practitioner to serve in the absence of the patient’s physician and surgeon or podiatrist, as the case may be.

“(3) The licensee was a designated practitioner serving in the absence of the patient’s physician and surgeon or podiatrist, as the case may be, and was in possession of or had utilized the patient’s records and ordered the renewal of a medically indicated prescription for an amount not exceeding the original prescription in strength or amount or for more than one refill.

“(4) The licensee was acting in accordance with Section 120582 of the Health and Safety Code.”

12. Section 2262 of the Code states:

“Altering or modifying the medical record of any person, with fraudulent intent, or creating any false medical record, with fraudulent intent, constitutes unprofessional conduct.

"In addition to any other disciplinary action, the Division of Medical Quality¹ or the California Board of Podiatric Medicine may impose a civil penalty of five hundred dollars (\$500) for a violation of this section."

13. Section 2266 of the Code states: The failure of a physician and surgeon to maintain adequate and accurate records relating to the provision of services to their patients constitutes unprofessional conduct.

FACTS

Patient 1:²

14. On or about August 19, 2015 and September 28, 2015, Patient 1, (an undercover officer with the California Department of Consumer Affairs) visited Respondent. Both visits were recorded in both audio and video formats.

15. On Patient 1's first visit the patient explicitly requested Vicodin³ because, "it made (him) feel good." Respondent told Patient 1 that Patient 1 had to report a pain symptom and then

¹ Code section 2002 states: “Unless otherwise expressly provided, the term “board” as used in this chapter means the Medical Board of California. As used in this chapter or any other provision of law, “Division of Medical Quality” and “Division of Licensing” shall be deemed to refer to the board.”

² Numbers are used to protect patient privacy.

³ Vicodin is a trademark for a drug containing hydrocodone bitartrate and acetaminophen.

1 Respondent would make a decision whether or not to prescribe the medication. Patient 1 then
2 claimed that he had an ankle sprain a year ago. Respondent indicated that the patient had to try a
3 non-scheduled medication first. Patient 1 then reported a broken ankle approximately 5 years ago
4 with no recent x-rays. Respondent indicated that he could prescribe an NSAID,⁴ but that it
5 "would not make him feel good." Eventually, Respondent offered to prescribe 30 pills of Vicodin
6 until Patient 1 had x-rays taken. An x-ray authorization was then provided to Patient 1 together
7 with a prescription for 30 Vicodin tablets.

8 16. At Patient 1's second visit on or about September 28, 2015, Respondent asked him
9 what type of medicine he was requesting. Patient 1 then requested Vicodin. Respondent then
10 provided Patient 1 with the prescription without an examination.

11 **Patient 2:**

12 17. Respondent's records indicate that he first saw Patient 2 on January 6, 2015, and
13 continued to see him until June 22, 2015. Respondent diagnosed Patient 2 with anxiety and
14 treated Patient 2 with Xanax⁵ and other benzodiazepines. Respondent also prescribed
15 Phenergan,⁶ Codeine⁷ and Norco⁸ to Patient 2, but the medical records do not evidence any
16 medical necessity for those prescriptions.

17 18. Patient 2 reported that he had "washed" a prescription and asked for a replacement,
18 which was provided without question and without contacting the pharmacy to determine if the
19 prescription had been filled, which it had.

20 19. Respondent's notes indicate that no monitoring of Patient 2's drug use took place; no
21 urine testing was done nor did Respondent review a CURES report for Patient 2.

22
23 ⁴ NSAIDs are nonsteroidal anti-inflammatory drugs used to treat or reduce inflammation.
24 "Nonsteroidal" means they do not contain hormones, unlike some other types of anti-
inflammatory drugs, and neither are they opioids.

25 ⁵ Xanax is an antianxiety agent of the benzodiazepine class used as tranquilizers or
sedatives or hypnotics or muscle relaxants; chronic use can lead to dependency.

26 ⁶ Phenergan is an antihistamine used to treat allergies, and is also used to treat motion
sickness.

27 ⁷ Codeine is an opiate used to treat pain, as a cough medicine, and for diarrhea. It is
typically used to treat mild to moderate degrees of pain. It is generally taken by mouth.

28 ⁸ Norco is a opioid used for pain management consisting of a combination of
acetaminophen and hydrocodone.

1 **Patient 3:**

2 20. Respondent first saw Patient 3 on October 6, 2011, when Patient 3 presented
3 complaining of low back pain. Patient 3 reported that Vicodin was prescribed by her previous
4 physician. On the first visit, Respondent prescribed Ultram⁹ and Phentermine¹⁰ to Patient 3,
5 without apparent medical necessity.

6 21. On November 22, 2011, Patient 3 again reported that she was taking Vicodin
7 prescribed by another physician. Respondent then gave her a refill for that prescription without
8 apparent medical necessity.

9 22. On March 24, 2012, Patient 3 was seen again by Respondent. Respondent provided
10 her with prescriptions for Vicodin and Phentermine. Following this visit the CURES reports
11 indicate prescriptions for controlled substances were provided on additional occasions but
12 medical records corresponding to the dates of those prescriptions are not in the records.

13 23. Respondent's notes indicate that no monitoring of Patient 3's drug use took place; no
14 urine testing was done nor did Respondent review a CURES report for Patient 3.

15 **Patient 4:**

16 24. Patient 4 first presented to Respondent on May 1, 2010, with a history of depression
17 and anxiety controlled by Xanax. Respondent diagnosed the patient with social anxiety and
18 major depression and instructed him to follow up with his psychiatrist in Texas.

19 25. On June 10, 2010, Patient 4 again visited Respondent complaining of depression,
20 anxiety and knee pain. Respondent gave Patient 4 prescriptions for Vicodin and Elavil,¹¹ which
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22 ⁹ Ultram is a brand name for Tramadol and is an opioid pain medication used to treat
23 moderate to moderately severe pain. When taken by mouth in an immediate-release formulation,
the onset of pain relief usually occurs within an hour. It is often combined with paracetamol
(acetaminophen).

24 ¹⁰ Phentermine is a psychostimulant drug of the substituted amphetamine chemical class,
25 with pharmacology similar to amphetamine. It is used medically as an appetite suppressant for
short term use, as an adjunct to exercise and reducing number calorie intake.

26 ¹¹ Elavil is a brand name for Amitriptyline used to treat a number of mental illnesses.
27 These include major depressive disorder and anxiety disorder, and less commonly attention
28 deficit hyperactivity disorder and bipolar disorder. Other uses include prevention of migraines,
treatment of neuropathic pain such as fibromyalgia and postherpetic neuralgia, and less
commonly insomnia.

1 the records indicate were refills. However, the original prescriptions' genesis is not reflected in
2 the records.

3 26. Patient 4 returned to Respondent on July 13, 2010, again complaining of depression,
4 anxiety and knee pain and Respondent again prescribed Elavil and Xanax, without a complete
5 examination.

6 27. On May 4, 2011, Patient 4 was prescribed Xanax and Trazodone¹² by Respondent
7 with no evidence of an office visit.

8 28. On September 12, 2012, Respondent prescribed Patient 4 Vicodin and Xanax, but no
9 physical examination or history is recorded.

10 29. On October 16, 2012, Patient 4 returned for a Xanax refill. Patient 4's vital signs are
11 documented, but no history or other physical examination is recorded and Xanax is again
12 prescribed.

13 30. On September 3, 2011, November 13, 2012, November 15, 2012, and June 11, 2013,
14 Patient 4 is prescribed controlled substances without any documentation of a history and an
15 examination. In addition, according to the CURES report, there were numerous prescriptions for
16 phentermine, hydrocodone,¹³ Vicodin, Adderall¹⁴ and Carisoprodol¹⁵ during 2014 without any
17 documentation of office visits or examinations.

18 31. No evidence of a urine toxicology screen being performed is present in Patient 4's
19 medical records and no CURES reports were run to determine if Patient 4 was receiving
20 prescriptions for controlled substances from any other physicians.

21
22 ¹² Trazodone, sold under many brand names worldwide, is an antidepressant medication
23 used to treat major depressive disorder, anxiety disorders, and in addition to other treatment,
24 alcohol dependence.

25 ¹³ Hydrocodone is a narcotic drug derived from codeine used in its bitartrate form as an
26 analgesic and antitussive.

27 ¹⁴ Adderall is a combination drug containing four salts of the two enantiomers of
28 amphetamine, a central nervous system stimulant of the phenethylamine class. Adderall is used
in the treatment of attention deficit hyperactivity disorder (ADHD) and narcolepsy. It is also used
as an athletic performance enhancer and cognitive enhancer, and recreationally as an aphrodisiac
and euphoriant.

¹⁵ Carisoprodol, marketed under the brand name Somadril among others, is a centrally
acting skeletal muscle relaxant of the carbamate class and produces all the effects associated with
barbiturates.

32. No complete history, physical examination, history of the pain symptom, previous evaluation, previous treatment, screening for psychological or substance abuse problems are recorded in the medical records for Patient 4.

FIRST CAUSE FOR DISCIPLINE

(Unprofessional Conduct – Gross Negligence)

33. By reason of the matters set forth above in paragraphs 14 through 32, incorporated herein by this reference, Respondent is subject to disciplinary action under section 2234, subdivision (b), in that Respondent was grossly negligent in the care and treatment of Patients 1, 2, 3 and 4. The circumstances are as follows:

34. Respondent's failure to evaluate Patient 1 prior to prescribing a controlled substance constitutes gross negligence.

35. Respondent's failure to obtain a history for Patients 1, 2, 3 and 4 or perform an adequate examination for Patients 1, 2, 3 and 4, prior to prescribing a controlled substance constitutes gross negligence.

36. Respondent's failure to perform a physical examination on Patient 1 and then placing notes in the medical records indicating that an examination had actually taken place constitutes gross negligence.

37. Respondent's prescribing of a controlled substance to Patient 1 after the patient told him he wanted it to "feel good" and not because it was medically indicated constitutes gross negligence.

38. Respondent's failure to monitor Patients 1, 2, 3 and 4's use of controlled substances by obtaining urine tests or a CURES report while continuing to prescribe controlled substances constitutes gross negligence.

SECOND CAUSE FOR DISCIPLINE

(Unprofessional Conduct - Repeated Negligent Acts)

39. By reason of the matters set forth above in paragraphs 14 through 32, incorporated herein by this reference, Respondent is subject to disciplinary action under section 2234, subdivision (c), in that Respondent was negligent in the care and treatment of Patient 3. The

1 circumstances are as follows:

2 40. Respondent prescribed Phentermine to Patient 3 without any evidence of dietary
3 counseling, which taken together with Respondent's other failures in the care and treatment of
4 Patient 4 constitutes repeated negligence acts.

5 **THIRD CAUSE FOR DISCIPLINE**

6 **(Failure to Maintain Adequate and Accurate Records)**

7 41. By reason of the matters set forth above in paragraphs 14 through 32, incorporated
8 herein by this reference, Respondent is subject to disciplinary action under section 2266 of the
9 Code in that he failed to maintain adequate and accurate medical records for Patients 1, 2, 3 and
10 4.

11 **FOURTH CAUSE FOR DISCIPLINE**

12 **(Unprofessional Conduct – Dishonesty)**

13 42. By reason of the matters set forth above in paragraphs 14 through 32, incorporated
14 herein by this reference, Respondent is subject to disciplinary action under section 2234,
15 subdivision (e), in that Respondent engaged in an act of dishonesty in the care and treatment of
16 Patient 1. The circumstances are as follows:

17 43. Respondent's failure to perform a physical examination on Patient 1 and then placing
18 notes in the medical records indicating that an examination had actually taken place constitutes
19 dishonesty.

20 **FIFTH CAUSE FOR DISCIPLINE**

21 **(Violation of Drug Statutes)**

22 44. By reason of the matters set forth above in paragraphs 14 through 32, incorporated
23 herein by this reference, Respondent is subject to disciplinary action under section 2238, in
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1 conjunction with sections 2241 and 2242 of the Code in that he violated drug statutes during his
2 care, treatment and management of Patients 1, 2, 3 and 4.

3 **SIXTH CAUSE FOR DISCIPLINE**

4 **(Prescribing to Addicts)**

5 45. By reason of the matters set forth above in paragraphs 14 through 32, incorporated
6 herein by this reference, Respondent is subject to disciplinary action under section 2241, of the
7 Code in that he prescribed controlled substances and other dangerous drugs to Patients 1, 2, 3 and
8 4.

9 **SEVENTH CAUSE FOR DISCIPLINE**

10 **(Prescribing without Performing an Appropriate Prior Examination or Medical Indication)**

11 46. By reason of the matters set forth above in paragraphs 14 through 32, incorporated
12 herein by this reference, Respondent is subject to disciplinary action under section 2242, of the
13 Code in that he prescribed controlled substances and other dangerous drugs to Patients 1, 2, 3 and
14 4 without performing a physical examination or determining a medical indication.
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16 **EIGHTH CAUSE FOR DISCIPLINE**

17 **(Unprofessional Conduct – Creating False Medical Record)**

18 47. By reason of the matters set forth above in paragraphs 14 through 32, incorporated
19 herein by this reference, Respondent is subject to disciplinary action under section 2262, in that
20 Respondent created a false medical record in the care and treatment of Patient 1. The
21 circumstances are as follows:
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23 48. Respondent indicated that Patient 1 (an undercover officer with the California
24 Department of Consumer Affairs) had undergone a physical examination when no physical
25 examination took place.
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